No. 93-406

Supreme Court, U.S.
FILED
OCT 8 1993
OFFICE OF THE CLERK

In The

Supreme Court of the United States

October Term, 1993

SAMUEL LEWIS, DIRECTOR ARIZONA DEPARTMENT OF CORRECTIONS, GRANT WOODS, ARIZONA ATTORNEY GENERAL,

Petitioners,

v.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA,

Respondent.

MICHAEL EMERSON CORRELL, JOSE ROBERTO VILLAFUERTE, JIMMY ALAN ARNETT,

Real Parties In Interest.

Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF OF THE STATES OF CALIFORNIA, ALABAMA, COLORADO, DELAWARE, IDAHO, KANSAS, KENTUCKY, LOUISIANA, MISSISSIPPI, MONTANA, NEBRASKA, NEVADA, NEW HAMPSHIRE, NEW JERSEY, NEW MEXICO, OREGON, PENNSYLVANIA, SOUTH CAROLINA, SOUTH DAKOTA, TENNESSEE, UTAH AND WYOMING AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

DANIEL E. LUNGREN
Attorney General of California
GEORGE WILLIAMSON
Chief Assistant Attorney General
DANE R. GILLETTE
Deputy Attorney General
MARK L. KROTOSKI
*Special Assistant Attorney General
1515 K Street, Suite 603
Sacramento, CA 95814
Telephone: (916) 324-5497
Attorneys for Amici
*Counsel of Record

October 8, 1993

[additional counsel on inside cover]

COCKLE LAW BRIEF PRINTING CO., (800) 225 6964
OR CALL COLLECT (402) 342 2831

James H. Evans
Attorney General of
Alabama
Alabama State House
11 South Union Street
Montgomery, AL 36130

Gale A. Norton
Attorney General of
Colorado
Department of Law
1525 Sherman Street
Denver, CO 80203

Charles M. Oberly, III
Attorney General of
Delaware
8th Floor
820 North French Street
Wilmington, DE 19801

Larry EchoHawk
Attorney General of Idaho
State House
Room 207
Boise, ID 83720-1000

Robert T. Stephan
Attorney General of Kansas
Judicial Center
Second Floor
Topeka, KS 66612-1597

Chris Gorman
Attorney General of
Kentucky
State Capitol
Frankfort, KY 40601

Richard P. Ieyoub
Attorney General of
Louisiana
Department of Justice
Criminal Division
P.O. Box 94095
Baton Rouge, LA
70804-9095

Mike Moore
Attorney General of
Mississippi
P.O. Box 220
Jackson, MS 39205

Joseph P. Mazurek
Attorney General of
Montana
Justice Building
215 North Sanders
Helena, MT 59620

Don Stenberg
Attorney General of
Nebraska
2115 State Capitol
Lincoln, NE 68509

Frankie Sue Del Papa
Attorney General of
Nevada
Capitol Complex
Carson City, NV 89710

Jeffrey Howard
Attorney General of
New Hampshire
25 Capitol Street
Concord, NH 03301-6397

Fred De Vesa, Acting
Attorney General of
New Jersey
Richard J. Hughes Justice
Complex
25 Market Street
Trenton, NJ 08625-0086

Tom Udall
Attorney General of
New Mexico
P.O. Drawer 1508
Santa Fe, NM 87504-1508

Theodore R. Kulongoski
Attorney General of
Oregon
100 Justice Building
Salem, OR 97310

Ernest D. Preate, Jr.
Attorney General of
Pennsylvania
16th Floor
Strawberry Square
Harrisburg, PA 17120

T. Travis Medlock
Attorney General of
South Carolina
Rembert C. Dennis Office
Building
P.O. Box 11549
Columbia, SC 29211

Mark W. Barnett
Attorney General of
South Dakota
500 East Capitol Avenue
Pierre, SD 57501-5070

Charles W. Burson
Attorney General of
Tennessee
450 James Robertson
Parkway
Nashville, TN 37243-0493

Jan Graham
Attorney General of Utah
236 State Capitol
Salt Lake City, UT 84114

Joseph B. Meyer
Attorney General of
Wyoming
123 Capitol Building
Cheyenne, WY 82002

QUESTION PRESENTED

Whether this Court should exercise its authority to define "prompt," within the meaning of *In re Blodgett*, 503 U.S. ___, 112 S.Ct. 674, 116 L.Ed.2d 669 (1992) (per curiam), in order to furnish guidance for the enforcement of this Court's mandate that the lower federal courts "take all steps necessary to ensure a prompt resolution" of capital habeas cases.

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

INTEREST OF *AMICI* 1

STATEMENT OF FACTS AND PROCEEDINGS 3

SUMMARY OF ARGUMENT 3

REASONS THE WRIT SHOULD ISSUE 4

I. Lack of An Adequate Enforcement Mechanism for the *Blodgett* "Duty" Severely Prejudices Vital State Interests 4

II. The Problem of Obtaining Final Judicial Resolution in Many Capital Habeas Cases is a National One 7

III. This Case Furnishes An Opportunity for the Court to Provide Needed Guidance Concerning the Application of the *Blodgett* Duty 13

A. Judicial Authority 13

B. Other Judicial Analogs: Defining "Prompt" Resolution and the Necessity of Establishing Reasonable "Outer Limits" 16

C. Issue Requires Resolution 18

CONCLUSION 20

TABLE OF AUTHORITIES

Page

FEDERAL CASES

Anderson v. Grammer, No. CV-84-L-741 10

Barefoot v. Estelle, 463 U.S. 880 (1983) 7

Browder v. Director, Department of Corrections of Illinois, 434 U.S. 257 (1978) 7

Brown v. Board of Education, 349 U.S. 294 (1955) 18

Chandler v. Florida, 449 U.S. 560 (1981) 14

Coleman v. Thompson, 501 U.S. ___, 111 S.Ct. 2546, 115 L.Ed.2d 640 (1991) 5

County of Riverside v. McLaughlin, 111 S.Ct. 1661, 114 L.Ed.2d 49 (1991) 16, 17, 18

Cupp v. Naughten, 414 U.S. 141 (1973) 14

Delo v. Stokes, 495 U.S. 320 (1990) 5

Donnelly v. DeChristoforo, 416 U.S. 637 (1974) 14

Fay v. Noia, 372 U.S. 391 (1963) 13

Francis v. Henderson, 425 U.S. 536 (1976) 13

Gerstein v. Pugh, 420 U.S. 103 (1975) 12, 16, 17

Gomez & Vasquez v. U.S. District Court for the Northern District of California, 503 U.S. ___, 112 S.Ct. 1652, 118 L.Ed.2d 293 (1992) (per curiam) 13

Griffin v. County School Board of Prince Edward County, 377 U.S. 218 (1964) 18

Griffin v. Delo, 961 F.2d 793 (8th Cir.) (per curiam), *cert. denied*, 113 S.Ct. 296 (1992) 10

Groseclose v. Dutton, No. 3:89-0662 (M.D. Tenn.) 8

TABLE OF AUTHORITIES – Continued

Page

Groseclose v. Tennessee, 454 U.S. 882 (1981) 8

Hilton v. Braunskill, 481 U.S. 770 (1987) 7

Hochstein v. Grammer, No. CV-84-L-755 10

Hovey v. Vasquez, No. C-89-1430-MHP 9

In re Blodgett, 503 U.S. ___, 112 S.Ct. 674, 116 L.Ed.2d 669 (1992) (per curiam) ..... *passim*

In re Michael Dutton, No. 92-6165 (6th Cir.) 9

Johnson v. Rogers, 917 F.2d 1283 (10th Cir. 1990) ..10, 15

Kerr v. U.S. District Court for the Northern District of California, 426 U.S. 394 (1976) 11

Mackey v. United States, 401 U.S 667 (1971) 5, 6

McClellan v. Young, 421 F.2d 690 (6th Cir. 1970) (per curiam) 15

McCleskey v. Zant, 499 U.S. 467, 111 S.Ct. 1454, 113 L.Ed.2d 517 (1991) 5, 6

Moore v. Ogilvie, 394 U.S. 814, 816 (1969) 12

Nebraska Press Ass'n v. Stuart, 427 U.S. 539 (1976) 12

Rickman v. Dutton, No. 3:85-0256 (M.D. Tenn.) 8

Rickman v. Tennessee, 454 U.S. 882 (1981) 8

Roche v. Evaporated Milk Ass'n, 319 U.S. 21 (1943) 15

Rose v. Lundy, 455 U.S. 509 (1982) 5

Rust v. Clarke, 960 F.2d 72 (8th Cir. 1992) (per curiam) 10, 14

Schneckloth v. Bustamonte, 412 U.S. 218 (1973) 6

Smith v. Phillips, 455 U.S. 209 (1982) 14

TABLE OF AUTHORITIES – Continued

Page

Spann v. Martin, 963 F.2d 663 (4th Cir. 1992) 6, 10

Stone v. Powell, 428 U.S. 465 (1976).....5, 6

Teague v. Lane, 489 U.S. 288 (1989) 5

Thomas v. Arn, 474 U.S. 140 (1985) 14

United States v. Hastings, 461 U.S. 499 (1983) 14

Will v. Calvert Fire Ins. Co., 437 U.S. 655 (1978)..... 15

Withrow v. Williams, 113 S.Ct. 1745, ___, 123 L.Ed.2d 407 (1993)..... 13

STATE CASES:

People v. Hovey, 44 Cal.3d 543 (Cal.), *cert. denied*, 488 U.S. 871 (1988) 9

State v. Anderson, 296 N.W.2d 440 (Neb. 1980), *cert. denied*, 450 U.S. 1025 (1981)..... 10

State v. Groseclose, 615 S.W.2d 142 (Tenn.), *cert. denied*, 454 U.S. 882 (1981)..... 8

STATUTES

28 United States Code

§ 1651(a) 15

§ 2241(a) 13

§ 2243..... 13

TABLE OF AUTHORITIES – Continued

Page

COURT RULES

Rules of the Supreme Court, rule 37.5 2

OTHER AUTHORITIES

H. Friendly, *Is Innocence Irrelevant? Collateral Attack on Criminal Judgments*, 38 U. Chi. L. Rev. 142 (1970) 5, 6

L. Powell, *Commentary: Capital Punishment*, 102 Harv. L. Rev. 1035 (1989) 6

P. Bator, *Finality in Criminal Law and Federal Habeas Corpus for State Prisoners*, 76 Harv. L. Rev. 441 (1963) 6

No. 93-406

In The

Supreme Court of the United States

October Term, 1993

SAMUEL LEWIS, DIRECTOR ARIZONA DEPARTMENT OF CORRECTIONS, GRANT WOODS, ARIZONA ATTORNEY GENERAL,

Petitioners,

v.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA,

Respondent.

MICHAEL EMERSON CORRELL, JOSE ROBERTO VILLAFUERTE, JIMMY ALAN ARNETT,

Real Parties In Interest.

Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF OF THE STATES OF CALIFORNIA, ALABAMA, COLORADO, DELAWARE, IDAHO, KANSAS, KENTUCKY, LOUISIANA, MISSISSIPPI, MONTANA, NEBRASKA, NEVADA, NEW HAMPSHIRE, NEW JERSEY, NEW MEXICO, OREGON, PENNSYLVANIA, SOUTH CAROLINA, SOUTH DAKOTA, TENNESSEE, UTAH AND WYOMING AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

INTEREST OF *AMICI*

This case presents important questions concerning the fair and timely enforcement of presumptively final and valid state court judgments. Once the direct review

process has concluded – following conviction and sentencing after the state court trial, a state appeal, and request for direct review to this Court – the States have an interest in prompt resolution of issues raised on federal *collateral* review, consistent with a full and fair consideration of the habeas petition. *Amici* are States who have concerns about obtaining finality, the enforcement of their state laws, and the orderly and proper administration of their criminal justice systems. Accordingly, *amici* have an interest in the clarification of what constitutes a "prompt" resolution of federal habeas cases.

Further, since the States must bear most of the costs of federal habeas review, *amici* have an interest in curtailing the "severe prejudice" which results when a federal court enters a stay and fails to resolve the case in a prompt manner. This includes an inability to enforce state criminal laws and an undermining of public confidence in our criminal justice system resulting from the failure to attain finality. Additionally, the deterrent effect of capital punishment is reduced when the lower federal courts fail to resolve habeas cases promptly. Unless this Court provides needed guidelines, *amici* States have no adequate means to request a prompt resolution of those habeas cases pending in federal court for a substantial period.

This brief is submitted by *amici* through their respective Attorneys General in accordance with Rule 37.5 of the Rules of the Supreme Court.

STATEMENT OF FACTS AND PROCEEDINGS

On July 1, 1993, Arizona filed a petition for writ of mandamus with the U.S. Court of Appeals for the Ninth Circuit requesting that the U.S. District Court of Arizona be compelled to resolve five capital habeas corpus cases which had been pending for several years since the first habeas petition had been filed and in which stays of execution had been issued. On July 21, 1993, the Ninth Circuit summarily denied the petition for writ of mandamus in an unpublished ruling. *See* App. to Pet. for Cert., at B-1. Arizona now petitions for certiorari.

SUMMARY OF ARGUMENT

The central issue presented is whether this Court will exercise its authority to establish meaningful guidelines to define "prompt" within the meaning of *Blodgett* so that the *Blodgett* duty may be effectively enforced. The problem of obtaining final judicial resolution in many capital cases is a national one. Unless the Court clarifies the *Blodgett* duty, States will have no means to request "prompt" resolution of those capital habeas cases which have been languishing in federal court. Without time limits (or some other vehicle for the State to urge resolution of long-pending federal habeas petitions), the *Blodgett* duty will remain a hollow one. If the United States Supreme Court does not resolve the issue presented in this case, Arizona has no other avenue for relief to enforce its state court judgments.

REASONS THE WRIT SHOULD ISSUE

I. Lack of An Adequate Enforcement Mechanism for the *Blodgett* "Duty" Severely Prejudices Vital State Interests

Many capital habeas cases are resolved in a fair and timely manner in federal court. However, in an unacceptable number of cases, an indefinite federal court stay is imposed and the federal court fails to resolve the matter promptly. In many of these cases, the States are left without *any* effective means of enforcing presumptively final and valid state court capital judgments. The petition at bar concerns this class of cases.

In *In re Blodgett*, 503 U.S. ___, 112 S.Ct. 674, 116 L.Ed.2d 669 (1992) (per curiam), this Court considered a petition for a writ of mandamus in a case where the Ninth Circuit had granted an indefinite stay of execution and delayed resolution of the case, which had already been argued and submitted, for more than a year. This Court noted that non-resolution of the case and the two-and-a-half year stay of execution "severe[ly] prejudice[d]" the State's sovereign authority to enforce its criminal law. 112 S.Ct. at 676. These circumstances compelled adoption of the *Blodgett* "duty":

> The delay in this case demonstrates the necessity for the rule that we now make explicit. In a capital case the grant of a stay of execution directed to a State by a federal court imposes on that court the concomitant *duty to take all steps necessary to ensure a prompt resolution of the matter*, consistent with its duty to give full and fair

> consideration to all of the issues presented in the case.

Blodgett, 112 S.Ct. at 676 (emphasis added).[1]

As this Court has accurately observed, "*most of the price* paid for federal review of state prisoner claims is *paid by the States.*" *Coleman v. Thompson*, 501 U.S. ___, 111 S.Ct. 2546, 2559, 115 L.Ed.2d 640 (1991) (emphasis added). In cases of substantial delay, the "severe prejudice," sustained by the State, and expressly recognized by the *Blodgett* Court, entails several well-recognized costs.

For example, during the pendency of a federal court stay and delay in resolving the case, the sovereign power of the States to enforce substantive criminal laws is denied and frustrated.[2] In addition, there can be no justice until finality is attained.[3] Public confidence in the

---

[1] This was not the first time that members of this Court noted the necessity for lower federal courts to develop procedures to handle federal capital cases in a priority or prompt manner. *See Delo v. Stokes*, 495 U.S. 320, 323 (1990) (Kennedy, J., concurring).

[2] *See, e.g., McCleskey v. Zant*, 499 U.S. 467, 111 S.Ct. 1454, 1469, 113 L.Ed.2d 517, 543 (1991) (discussing intrusion into state sovereignty interests); *Teague v. Lane*, 489 U.S. 288, 309 (1989) (plurality opinion); *Rose v. Lundy*, 455 U.S. 509, 518-19 (1982) (noting comity interest); *Stone v. Powell*, 428 U.S. 465, 491 n.31 (1976).

[3] *See McCleskey*, 111 S.Ct. at 1468 ("Neither innocence nor just punishment can be vindicated until the final judgment is known."); *see also Teague*, 489 U.S. at 309 (plurality opinion); *Stone*, 428 U.S. at 491 n.31; *Mackey v. United States*, 401 U.S 667, 683, 690-91 (1971) (Harlan, J., concurring and dissenting); H. Friendly, *Is Innocence Irrelevant? Collateral Attack on Criminal Judgments*, 38 U. Chi. L. Rev. 142, 147 (1970) [hereinafter H.

ability of our criminal justice system to resolve primary criminal justice disputes is also undermined.[4] Finally, if a second state trial is required, its outcome and accuracy may turn on the reliability and availability of any remaining evidence.[5]

In considering the issue of federal court delay in habeas corpus proceedings, the nature and function of collateral review must also be taken into account. Federal

---

Friendly, *Is Innocence Irrelevant?*]; P. Bator, *Finality in Criminal Law and Federal Habeas Corpus for State Prisoners*, 76 Harv. L. Rev. 441, 450-51 (1963).

[4] *See, e.g., Schneckloth v. Bustamonte*, 412 U.S. 218, 275 (1973) (Powell, J., concurring) ("It is this paradox of [our habeas corpus] system, which so often seems to subordinate substance to form, that increasingly provokes criticism and lack of confidence."); *see also Stone*, 428 U.S. at 491 (noting concern over "generating disrespect for the law and administration of justice"); *Spann v. Martin*, 963 F.2d 663, 673 (4th Cir. 1992) ("The public also has a vital interest in the fair and prompt conclusion of habeas corpus petitions in the federal courts, particularly when they involve a serious crime prosecuted by one of the states."); L. Powell, *Commentary: Capital Punishment*, 102 Harv. L. Rev. 1035, 1035 (1989) (noting the "years of delay between sentencing and execution . . . undermine[] the deterrent effect of capital punishment and reduce[] public confidence in the criminal justice system").

[5] *See, e.g., Mackey*, 401 U.S. at 691 (Harlan, J., concurring and dissenting) (noting the "very act of trying *stale facts* may well, ironically, produce a second trial no more reliable as a matter of getting at the truth than the first") (emphasis added); *see also McCleskey*, 111 S.Ct. at 1468; H. Friendly, *Is Innocence Irrelevant?*, 38 U. Chi. L. Rev. at 147.

habeas review is a civil proceeding,[6] which follows a presumptively final and valid state court criminal conviction and sentence. *Barefoot v. Estelle*, 463 U.S. 880, 887 (1983). As this Court has emphasized, "The role of federal habeas proceedings, while important in assuring that constitutional rights are observed, is *secondary* and *limited*. Federal courts are not forums in which to *relitigate* state trials." *Id.* (emphasis added). This case therefore concerns the duty of federal courts to review fairly constitutional challenges to state court judgments without prejudicing important state interests.

II. The Problem of Obtaining Final Judicial Resolution in Many Capital Habeas Cases is a National One

The States confront the problem of substantial delay in a number of lower federal courts around the country. In many of these cases, the two-and-a-half year stay, which prompted the *Blodgett* duty in the first instance, has been exceeded.

In its petition, the State of Arizona has already noted the capital cases which have been stayed and pending in district court for a substantial period. A review of a few pending capital cases illustrates the national problem. Some of these cases involve the most gruesome murders in our society:

---

[6] *Hilton v. Braunskill*, 481 U.S. 770, 776 & n.5 (1987) (noting civil nature of habeas proceedings); *Browder v. Director, Department of Corrections of Illinois*, 434 U.S. 257, 257 (1978).

- William Edward Groseclose was convicted and sentenced to death for his role in the 1977 contract murder of his wife, called "one of the most atrocious and inhuman conceivable" by the Supreme Court of Tennessee. *State v. Groseclose*, 615 S.W.2d 142, 145 (Tenn.), *cert. denied*, 454 U.S. 882 (1981). The victim was strangled into unconsciousness, stabbed in the back and placed in her automobile trunk. Despite cries for help, she was left in the trunk, ultimately dying from excessive heat. *Id.* at 145-46. Groseclose's conviction became final in 1981, *Groseclose v. Tennessee*, 454 U.S. 882 (1981), and he filed a habeas corpus petition in the U.S. District Court for the Middle District of Tennessee, which issued a stay in 1989. The State of Tennessee filed two dispositive motions in 1990, which remain undecided despite requests for rulings. *Groseclose v. Dutton*, No. 3:89-0662 (M.D. Tenn.).

- Ronald Eugene Rickman, co-defendant in *Groseclose*, was convicted and sentenced to death as the contract killer of Groseclose's wife. *See State v. Groseclose*, 615 S.W.2d 142 (Tenn.), *cert. denied*, 454 U.S. 882 (1981). His conviction became final in 1981. *Rickman v. Tennessee*, 454 U.S. 882 (1981). He filed a habeas corpus petition in the U.S. District Court for the Middle District of Tennessee, which issued a stay in 1985. After denying the State of Tennessee's motion to transfer the case, the court took no further action for three years. This prompted several motions from the State to ascertain the status of the case in 1988 to 1989. *Rickman v. Dutton*, No.

3:85-0256 (M.D. Tenn.). The State of Tennessee filed a dispositive motion in 1990, which remained undecided when the State filed a petition for writ of mandamus in the Sixth Circuit in September, 1992. In response to the mandamus petition, the district court set an evidentiary hearing for six days later. The evidentiary hearing was continued indefinitely at Rickman's request. The Sixth Circuit has not taken final action on the mandamus petition, despite the State's motion to expedite filed five months ago. *In re Michael Dutton*, No. 92-6165 (6th Cir.).

■ Richard Hovey was convicted and sentenced to death for the 1978 kidnapping and murder of an eight year old girl. The victim was beaten and stabbed. The evidence demonstrated that Hovey killed the child because she had seen his face and he was afraid she could identify him. Subsequent to the murder, Hovey kidnapped and sexually assaulted a nine year old girl. The judgment was affirmed by the California Supreme Court in 1988. *People v. Hovey*, 44 Cal.3d 543 (Cal.), *cert. denied*, 488 U.S. 871 (1988). A petition for writ of habeas corpus was filed in the U.S. District Court for the Northern District of California on April 26, 1989; the federal court issued a stay of execution on April 27, 1989. *Hovey v. Vasquez*, No. C-89-1430-MHP. The State filed a motion for summary judgment on January 30, 1991. An opposition was filed in May, 1991. Despite requests from the State to schedule a hearing, the district court has not acted on the summary judgment motion.

- Two Nebraska cases have been pending for nearly nine years on federal habeas review. Peter Hochstein and C. Michael Anderson were convicted and sentenced to death for a 1975 contract murder of Anderson's employer. *State v. Anderson*, 296 N.W.2d 440 (Neb. 1980), *cert. denied*, 450 U.S. 1025 (1981). Federal habeas petitions and federal court stays were issued in 1984. *Anderson v. Grammer*, No. CV-84-L-741; *Hochstein v. Grammer*, No. CV-84-L-755. Over the State of Nebraska's objection, on January 4, 1993, the federal court allowed the filing of a third amended petition.

The problem of federal court delay has also been chronicled in some published cases where appellate courts have found it necessary to order that federal habeas capital cases be expedited. These reviewing courts have felt obliged to impose specific time limits for resolving the case,[7] or at least require "prompt" resolution.[8] Significantly, until such action occurs by a

---

[7] *See Rust v. Clarke*, 960 F.2d 72, 73 (8th Cir. 1992) (per curiam) (in capital habeas case "pending for almost four years," "remand[ing] the case to the district court to pass on the remaining claims within ninety days" and noting capital habeas cases should generally "be briefed within six months of filing and decided within a reasonable time thereafter"); *Johnson v. Rogers*, 917 F.2d 1283, 1284 (10th Cir. 1990) (in habeas case pending "more than fourteen months without resolution," ordering case to be heard and decided "within sixty days"); *see also Griffin v. Delo*, 961 F.2d 793, 794 (8th Cir.) (per curiam) (remanding habeas case to district court to "consider new claims, defenses and certify its final consideration" of case "within 180 days"), *cert. denied*, 113 S.Ct. 296 (1992).

[8] *Spann*, 963 F.2d at 673 (in capital habeas case "pending for more than five years" before the district court, remanding "for a

reviewing court, enforcement of the state court conviction and sentence are held in abeyance pending resolution by the federal court.

However, in many other cases, as here, State requests for resolution of the case are denied by the appellate court in an unpublished, summary ruling.[9] *See* App. to Pet. for Cert., at B-1. This action furnishes a judicial "stamp of approval" on the substantial delay of the lower court in resolving the case, contrary to the dictates of *Blodgett*. In these cases, the States lack any effective means to enforce their state court judgments.

Amici States recognize the extraordinary nature of mandamus relief and that it is an accepted prerequisite that a petition for writ of mandamus only be filed when the party has no other adequate means to obtain relief.[10] That step has been pursued here by the State of Arizona. Notwithstanding the clear directive of the *Blodgett* duty,

---

prompt consideration" of the magistrate judge's recommendations).

[9] Given the extraordinary nature of mandamus relief, *see* note 10, *infra*, many federal courts appear reluctant to publish decisions compelling action by a lower court. For this reason, an illusion may be created that there is no split in authority by the absence of published orders.

[10] *See, e.g., Kerr v. U.S. District Court for the Northern District of California*, 426 U.S. 394, 402 (1976) ("The remedy of mandamus is a drastic one, to be invoked only in extraordinary situations.").

As a predicate for relief in a petition for writ of mandamus, the *Blodgett* Court also required that the State seek affirmative relief in the court where the case is pending before requesting the involvement of a reviewing court. *See Blodgett*, 112 S.Ct. at 676-77.

the instant matter – as well as other cases from around the country – makes clear the necessity to clarify and establish a meaningful enforcement mechanism so that the *Blodgett* duty will not become ineffectual. Without such guidance from this Court, States will be left with no other means of prompting resolution of cases pending on federal collateral review and enforcing presumptively valid and final state court judgments.[11]

---

[11] In the event that respondent and the real parties in interest may attempt to argue that this case has become mooted, this Court should still exercise jurisdiction under the "capable of repetition, yet evading review" doctrine. *See, e.g., Gerstein v. Pugh*, 420 U.S. 103, 110 n.11 (1975). This exception has been applied, as it should here, where "[t]he need for . . . resolution . . . reflects a continuing controversy in the federal-state area" under this Court's cases. *Moore v. Ogilvie*, 394 U.S. 814, 816 (1969).

Moreover, the State of Arizona will continue to be "severely prejudiced" from the considerable delay encountered in other federal habeas cases. For example, the petitioner's brief lists other pending cases which have been languishing in federal court for a substantial period. *See* App. to Pet. for Cert., at A-33. It is therefore likely that the same action may arise again between the State of Arizona and respondent. As noted in the text, other States presently confront similar circumstances.

Finally, lower federal courts may attempt to evade the review of this Court by resolving the federal habeas case only *after* the State pursues its final remedy: a petition for certiorari review by this Court. *Cf. Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 546 (1976) ("The Court has recognized, however, that jurisdiction is not necessarily defeated simply because the order attacked has expired. . . . "). For these reasons, it is also appropriate for this Court to resolve this problem on the merits since it is capable of repetition, yet evading review.

III. This Case Furnishes An Opportunity for the Court to Provide Needed Guidance Concerning the Application of the *Blodgett* Duty

A. Judicial Authority

Before considering a *Blodgett* enforcement mechanism, it is useful to review the authority of this Court to adopt specific guidelines to promote the *Blodgett* duty. As will be seen, there are at least three sources of authority available for this Court to promulgate an effective *Blodgett* enforcement mechanism.

First, at least one case has suggested that the *Blodgett* duty is grounded on principles of equity, as is much of this Court's habeas jurisprudence.[12] It therefore follows

---

[12] *See Gomez & Vasquez v. U.S. District Court for the Northern District of California*, 503 U.S. ___, 112 S.Ct. 1652, 1653, 118 L.Ed.2d 293 (1992) (per curiam) ("Equity must take into consideration the State's strong interest in proceeding with its judgment and [the habeas petitioner's] obvious attempt at manipulation.") (citing, *inter alia*, *Blodgett*).

The habeas statute provides for the exercise of equitable discretion. *See* 28 U.S.C. § 2241(a) ("Writs of habeas corpus *may* be granted. . . . ") (emphasis added); § 2243 ("The court shall . . . dispose of the [application for a writ of habeas corpus] *as law and justice require.*") (emphasis added). Many of this Court's cases have recognized the equitable nature of habeas relief. *See, e.g., Francis v. Henderson*, 425 U.S. 536, 539 (1976) ("This Court has long recognized that in some circumstances considerations of comity and concerns for the orderly administration of criminal justice require a federal court to forgo the exercise of its habeas corpus power."); *Fay v. Noia*, 372 U.S. 391, 438 (1963) ("[H]abeas corpus has traditionally been regarded as governed by equitable principles."); *see generally Withrow v. Williams*, 113 S.Ct. 1745, 1766-67, 123 L.Ed.2d 407 (1993) (Scalia, J., dissenting) (discussing historic tradition of equitable discretion under the writ).

that the equity basis to establish the *Blodgett* duty in the first instance supplies the authority for the Court to make that duty enforceable. It would otherwise be untenable to suggest that the Court had authority to establish the *Blodgett* duty but lacked the means to ensure the duty's proper application.

Second, while federal courts clearly lack supervisory authority over *state* judicial proceedings,[13] this Court has supervisory authority concerning the administration of justice in the *federal* courts.[14] This supervisory authority has been relied upon to expedite resolution of capital habeas cases.[15] The exercise of this authority is particularly appropriate for such cases which regularly involve the imposition of an indefinite stay of execution by the federal court. Plainly, attendant with the exercise of this

---

[13] *Smith v. Phillips*, 455 U.S. 209, 221 (1982) ("Federal courts hold no supervisory authority over state judicial proceedings and may intervene only to correct wrongs of constitutional dimension."); *Chandler v. Florida*, 449 U.S. 560, 570, 582-83 (1981); *Donnelly v. DeChristoforo*, 416 U.S. 637, 642 (1974); *Cupp v. Naughten*, 414 U.S. 141, 146 (1973).

[14] *See, e.g., United States v. Hastings*, 461 U.S. 499, 505 (1983) ("[I]n the exercise of supervisory powers, federal courts may, within limits, formulate procedural rules not specifically required by the Constitution or the Congress."); *see also Thomas v. Arn*, 474 U.S. 140, 146-48 (1985) (noting supervisory authority of courts of appeals to promulgate procedural rules regarding the management of litigation).

[15] *See, e.g., Rust*, 960 F.2d at 73 (relying on "general supervisory authority to make certain that this case be expedited and not delayed any further" and remanding "to the district court to pass on the remaining claims within ninety days").

great authority is the responsibility to resolve the case fairly and promptly.

Third, the All Writs Act provides that "The Supreme Court . . . may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C. § 1651(a). Among other things, the writ may be utilized "to compel [an inferior court] to exercise its authority when it is its duty to do so." *Roche v. Evaporated Milk Ass'n*, 319 U.S. 21, 26 (1943) (quoted in *Will v. Calvert Fire Ins. Co.*, 437 U.S. 655, 661 (1978) (plurality opinion)). Petitions for writ of mandamus have been granted in habeas corpus cases in which resolution of the case had been pending for a substantial period.[16] In fact, the *Blodgett* duty arose in a case where the State of Washington directly petitioned this Court for a writ of mandamus. *See Blodgett*, 112 S.Ct. at 677 (denying petition without prejudice). In the instant matter, the State of Arizona's petition for writ of mandamus has been summarily denied by the court of appeals.

In sum, there is no dispute over the Court's authority to enforce the *Blodgett* duty. The only question is whether

---

[16] *See, e.g., Johnson*, 917 F.2d at 1285 (granting petition, holding "that the fourteen-month delay in this case for no reason other than docket congestion is impermissible," and ordering case to be heard and decided "within sixty days"); *McClellan v. Young*, 421 F.2d 690, 691 (6th Cir. 1970) (per curiam) (issuing writ of mandamus and ordering district court to act on habeas petition "not later than ten days after receipt of a copy of this Order"); *accord Will*, 437 U.S. at 666-67 ("Where a district court obstinately refuses to adjudicate a matter properly before it, a court of appeals may issue the writ. . . . ").

and how this authority should be exercised. *Amici* States respectfully submit that they will be without *any* effective remedy until this Court does so. As this case demonstrates, all other possible remedies have been pursued by the State. Only this Court can relieve the severe prejudice caused by the inability of the U.S. District Court to resolve the habeas cases at bar.

B. Other Judicial Analogs: Defining "Prompt" Resolution and the Necessity of Establishing Reasonable "Outer Limits"

Central to the *Blodgett* rule is the federal court "duty to take all steps necessary to ensure a *prompt* resolution of the matter." *Blodgett*, 112 S.Ct. at 676 (emphasis added). In other contexts, this Court has adopted time limits or specific standards to define the meaning of "prompt" to guide the lower courts and parties.

For example, in *County of Riverside v. McLaughlin*, this Court defined "prompt" within the meaning of its holding in *Gerstein v. Pugh*, 420 U.S. 103 (1975), that "the Fourth Amendment requires a prompt judicial determination of probable cause as a prerequisite to an extended pretrial detention following a warrantless arrest." *McLaughlin*, 111 S.Ct. 1661, 1665, 114 L.Ed.2d 49 (1991). As the *McLaughlin* Court recognized, "Although we hesitate to announce that the Constitution compels a specific time limit, it is important to provide some degree of certainty so that States and counties may establish procedures with confidence that they fall within constitutional bounds." *Id.* at 1670.

In assessing the competing interests at stake, the Court defined *Gerstein* promptness under a general 48-hour rule.[17] This rule established a presumption of reasonableness to insulate probable cause determinations from "system challenges," while affording "a substantial degree of flexibility." *Id.* at 1670. When a probable cause determination is not held within 48 hours, the burden shifts to the government to demonstrate that the detention was "reasonable" under the circumstances. *McLaughlin*, 111 S.Ct. at 1665.

There are several analogies between the matter at bar and *McLaughlin*. In fact, a more compelling case can arguably be made to establish time limits to make the *Blodgett* duty meaningful, since it arises under a statutory, not constitutional, scheme. Similar to federal habeas corpus proceedings, the *Gerstein* rule is predicated on "important competing interests," requiring "a 'practical compromise' between the rights of individuals and the realities of law enforcement."[18] In adopting the *Gerstein* rule, this Court considered the "burden" of *Gerstein* proceedings on state criminal justice systems, giving "proper

---

[17] In contrast with the 48-hour rule of the majority, one *McLaughlin* dissent argued for a 24-hour rule. *See McLaughlin*, 111 S.Ct. at 1676 (Scalia, J., dissenting). Both the majority and dissent therefore recognized the necessity of providing guidance by establishing outer boundaries on *Gerstein* "promptness."

[18] *McLaughlin*, 111 S.Ct. at 1668; *see also id.* at 1669 ("*Gerstein* struck a balance between competing interests; a proper understanding of the decision is possible only if one takes into account both sides of the equation."); *id.* at 1670 ("*Gerstein* clearly contemplated a reasonable accommodation between legitimate competing concerns.").

deference to the demands of federalism." *Id.* at 1668. Further, this Court recognized that "it is not enough to say that probable cause determinations must be 'prompt' " and that the "vague" standard of promptness in *Gerstein* "simply has not provided sufficient guidance." *Id.* at 1669.

Perhaps Justice Scalia best summed up the issue presented by this case when he noted, in the *Gerstein* Fourth Amendment context, "Any determinant of *'reasonable promptness'* . . . must be restricted by *some outer time limit*, or else the promptness guarantee would be worthless." *McLaughlin*, 111 S.Ct. at 1675 (Scalia, J., dissenting) (emphasis added). Unless and until the Court establishes outer limits on the meaning of "prompt" under the *Blodgett* duty, the *Blodgett* rule of this Court will be rendered meaningless by those lower federal courts which decide not to comply with its dictates.[19]

C. Issue Requires Resolution

The facts of the case at bar – as well as other cases from around the country – demonstrate the necessity for the Court to define "prompt" under the *Blodgett* duty. In hearing the case on the merits, the Court will have an

---

[19] Other historical episodes should prove instructive as the Court fashions a "promptness" standard under *Blodgett*. For example, this Court commanded that school districts desegregate "with all deliberate speed," *Brown v. Board of Education*, 349 U.S. 294, 301 (1955), a directive which ultimately required further intervention and clarification by this Court. *See Griffin v. County School Board of Prince Edward County*, 377 U.S. 218, 234 (1964) ("The time for mere 'deliberate speed' has run out.").

opportunity to consider various potential means to enforce the *Blodgett* duty. The State of Arizona has recommended one possibility involving presumptive time limits. Under this proposal, if resolution of the case did not occur within the established time limit, a prima facie case would be made that the *Blodgett* mandate was not satisfied. Upon this prima facie showing, an order to show cause would be issued to the lower court. Other options for enforcing the *Blodgett* duty may also be explored if the Court considers this case on the merits.

One thing is clear. Without action by this Court, States confronting similar circumstances like Arizona have no other avenue for relief. In these cases, the costs of federal collateral review continue to be unfairly borne by the States.

CONCLUSION

For the foregoing reasons, *amici* respectfully request that the Court grant the petition for a writ of certiorari.

Dated: October 8, 1993

Respectfully submitted,

DANIEL E. LUNGREN
Attorney General of California

GEORGE WILLIAMSON
Chief Assistant Attorney General

DANE R. GILLETTE
Deputy Attorney General

*MARK L. KROTOSKI
Special Assistant Attorney General

1515 K Street, Suite 603
Sacramento, California 95814
(916) 324-5497

Attorneys for Amici
*Counsel of Record